
In the United States Bankruptcy Court
for the
Southern District of Georgia
Savannah Division

In the matter of:)	
)	Chapter 11 Case
FIRST AMERICAN HEALTH CARE)	
OF GEORGIA, INC., and its wholly)	Number <u>96-20188</u>
owned subsidiaries)	
)	
<i>Debtors</i>)	
)	
)	
SARAH BERNICE NORMAN)	
)	
<i>Movant</i>)	
)	
)	
v.)	
)	
FIRST AMERICAN HEALTH CARE)	
OF GEORGIA, INC., et. al.,)	
)	
<i>Respondent</i>)	

**MEMORANDUM AND ORDER ON MOTION FOR
RELIEF FROM STAY**

Movant, Sarah Bernice Norman, comes before this Court requesting relief from the automatic stay pursuant to the provisions of 11 U.S.C. Section 362(d)(1). First American Health Care of Georgia, Inc. (hereinafter "Debtor"), opposes the requested relief.

On June 9, 1996, this matter came before this Court for a hearing. Based upon the parties' briefs, the record in the file, and applicable authorities, I make the following Findings of Fact and Conclusions of Law pursuant to Bankruptcy Rule 7052.

FINDINGS OF FACT

Sarah Bernice Norman (hereinafter "Ms. Norman"), a resident of the State of Alabama, is a former employee of First American Home Health Care of Alabama, Inc, a wholly-owned subsidiary of the Debtor. Prior to the filing of Debtor's petition, Ms. Norman brought two causes of action against Debtor in Alabama state court: a worker's compensation claim and a wrongful discharge claim. The worker's compensation claim has been settled, subject to entry of an order in the Circuit Court of Calhoun County, Alabama. The wrongful discharge claim has been removed to the United States Bankruptcy Court for the Northern District of Alabama subsequent to the filing of its bankruptcy case pursuant to 28 U.S.C. Section 1452(a). Ms. Norman also has filed a proof of claim in this bankruptcy asserting the same wrongful termination claim which is the subject of the Alabama Bankruptcy Court litigation; Debtor has objected to that claim.

First American Home Health Care of Alabama, Inc., employed Ms. Norman from July of 1993 until May of 1994 when she was discharged. Debtor alleges that Ms. Norman was terminated for violating company policies, including submitting false patient care records; Ms. Norman contends that she was fired for filing a worker's compensation

claim. This matter and these contentions are exacerbated further by the fact that Ms. Norman was allegedly raped while conducting a home visit during the period of her employment. Debtor contends that Ms. Norman is attempting to litigate the alleged assault in state court and circumvent the worker's compensation laws. Ms. Norman asserts that the reason for her dismissal stems directly from the alleged incident. In any event, Ms. Norman now requests relief of this Court to pursue this action in the Alabama court system. Debtor, on the other hand, requests that this Court deny Ms. Norman's Motion.

CONCLUSIONS OF LAW

11 U.S.C. Section 362 provides in pertinent part as follows:

(d) On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay--

(1) for cause, including lack of adequate protection of an interest in property of such party in interest;

After considering the evidence presented and the arguments during the hearing, this Court grants Ms. Norman's Motion.

In instances such as the present one, the clear weight of judicial authority

recognizes that granting "cause" pursuant to Section 362(d)(1) is a discretionary decision in which the bankruptcy court weighs the equities and determines whether a proceeding brought in another forum should continue until a claim is fixed and liquidated or should remain within the province of the bankruptcy forum. *See In re TriCare Rehabilitation Systems, Inc.*, 181 B.R. 569, 572 (Bankr.N.D.Ala. 1994). A laundry list of factors may be considered in determining the appropriate relief. *See In re Johnson*, 115 B.R. 634, 636 (Bankr.D.Minn. 1989); *In re Curtis*, 40 B.R. 795, 799-800 (Bankr.D.Utah 1984). These factors include judicial economy, whether the issues are governed solely by state law, the stage of the state court litigation, interference with the underlying bankruptcy proceeding, and the convenience of each forum. *See Id.*; *see also In re Jim Walters Resources*, 172 B.R. 380, 383 (holding that bankruptcy court in Alabama was convenient forum for all parties). In the present case, Ms. Norman has satisfied this Court that she should be permitted to proceed in the courts of Alabama.

During previous hearings, Debtor has represented itself to this Court as a national home health care corporation with approximately 15,000 employees and 35,000 patients. During this bankruptcy, this Court has approved the application of a number of professionals, including attorneys, accountants, and other consultants, both in and out-of-state. When weighing the ability of Ms. Norman, an individual residing in the state of Alabama, to prosecute a suit in this forum against that of the Debtor, a national corporation with twenty-one subsidiaries and an annual gross income of approximately \$550 million,

equity mandates that this litigation return to the State of Alabama. Unlike many bankruptcies which are handled by one law firm and a debtor with a limited number of resources from which to draw; here, there is no present need for the consolidation of cases nor any significant cost benefit to the Debtor which already has competent counsel in Alabama.

Moreover, the case had already commenced prior to the filing of the bankruptcy; it concerns matters solely of Alabama law, and denying this Motion would only delay the case's ultimate adjudication and cost the Debtor additional expense in preparation for an additional trial. Debtor's primary concern appears to be the recent exorbitant awards of Alabama juries. *See* Brief of Official Unsecured Creditors' Committee in Opposition of Motion for Relief, Doc. No. 382, July 19, 1996; *see also* BMW of North America, Inc., v. Gore, 116 S.Ct. 1589, 134 L.Ed.2d 809 (1996). However, this concern should be decided not by this Court, but by the Alabama appellate courts.

Accordingly, in order to promote judicial economy, conserve the resources of the estate, and ensure the proper adjudication of issues which are solely governed by Alabama state law, Ms. Norman's Motion for Relief is hereby granted.

ORDER

Pursuant to the foregoing Findings of Fact and Conclusions of Law, IT IS THE ORDER OF THIS COURT that Sarah B. Norman's Motion for Relief from Stay is granted for the sole purpose of continuing her wrongful discharge claim to fix and liquidate the appropriate amount of damages, if any.

Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia

This ____ day of August, 1996.